

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-184285

DATE: July 21, 1975

MATTER OF: Wil-Da Mechanical and Electrical Company,
Incorporated

DIGEST:

1. Protest filed after bid opening alleging impropriety of clause in IFB is untimely under Bid Protest Procedures, since it was not filed prior to bid opening.
2. Untimely protest against provision in IFB for construction contract relating to extent of work to be performed by prime contractor does not present "significant issue" for consideration under Bid Protest Procedures since issue has been previously treated on merits.

The subject protest concerns an invitation for bids (IFB) No. DACA63-75-B-0201, issued by the Office of the District Engineer, Fort Worth District Corps of Engineers, Fort Worth, Texas. The IFB sought bids for the construction of alterations to a building at the Health Service Command Headquarters.

Three bids were received and opened on the scheduled opening date of June 19, 1975. Wil-Da Mechanical and Electrical Company, Incorporated (Wil-Da) submitted the highest bid.

On June 24, 1975 Wil-Da protested to our Office contending that the IFB specifications are defective. In this regard, Wil-Da notes that the IFB contained the following provisions:

"The Contractor shall perform on the site, and with his own organization, work equivalent to at least twenty-five percent (25%) of the total amount of work to be performed under the contract.

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"10. Performance of Work by the Contractor.-
Unless he has submitted such description with his bid, the successful bidder must furnish the Contracting Officer within 20 days after award a description of the work which he intends to perform

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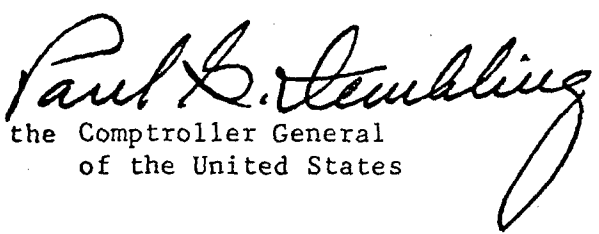
with his own organization (e.g., earthwork, paving, brickwork, or roofing), the percentage of the total work this represents, and the estimated cost thereof."

It is Wil-Da's position that the above quoted clause, by permitting the contractor to submit information after award as to the work it intends to perform improperly allows the determination of a matter which pertains to the responsiveness of the bid.

Our Bid Protest Procedures provide at Section 20.2(b)(1) that protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening shall be filed prior to bid opening. Since this was not done in this case, the protest is clearly untimely. See A.C.E.S., Inc., B-181926, January 2, 1975.

Wil-Da argues that the effect of the clause in question raises a significant issue and that under Section 20.2(c) of our Bid Protest Procedures the matter should be considered despite the fact the protest was not timely filed. We note that the matter raised by the protester has been treated on its merits previously. See 41 Comp. Gen. 106 (1961) wherein we held that a provision similar to the instant clause was determined to properly relate to bidder responsibility rather than bid responsiveness. See also in this connection B-163626, May 8, 1968. In the circumstances, we do not consider the issue as significant under the untimeliness exception.

Accordingly, the protest is not for consideration on its merits.


For the Comptroller General
of the United States